that she carried the package containing the drugs onto the train at Johore Bahru by arrangement with the accused, in furtherance of the common intention of them both to import the drugs into Singapore. We believed that she witnessed the package being thrown out of the train by the accused, to the waiting Yusoff, that Yusoff retrieved it and took it to the flat, and that its contents were seized by the CNB officers when they carried out the raid.

We have indicated areas in the prosecution case which gave us pause, lest it be said that we failed to take account of them, but having regard to the evidence as a whole, in particular Jamala's evidence in so far as it bore on the importation of the drugs, the accused's voluntary oral and written statements, and our assessment of the accused's credibility, we were satisfied of the accused's guilt beyond reasonable doubt. We convict him as charged.

Accused convicted.

Solicitors: *Sant Singh & Partners.*

Reported by *Ng Sheau Jiuan*

MALAYSIAN REPORTS

Dato M Muthupalaniappan v Tamil Malar Sdn Bhd & Anor

HIGH COURT (SEREMBAN) – CIVIL SUIT NO 22-220-1988
MUSTAPHA HUSSAIN J
15 FEBRUARY 1989

Civil Procedure – Ex parte injunction – Application to set aside – Libellous articles published by defendants – Plaintiff filed writ of summons and obtained ex parte injunction – Statements complained of and averments that they were not true not stated in supporting affidavit – Whether fatal to application for injunction

Tort – Libel – Plaintiff obtained ex parte injunction against defendants for libellous articles published – Statements complained of and averments that they were not true not stated in supporting affidavit – Whether fatal to application for injunction

The plaintiff was an elected state assemblyman for Rantau constituency and operated a service centre in Rantau where the constituents can go and seek help from the plaintiff. The first defendant was the publisher of a Tamil language newspaper and the second defendant was the editor of that newspaper. The defendants had published in their newspaper that the plaintiff did not go to the service centre for about three months, that the electricity supply had been disconnected and that the service centre had been closed down for good. The article also said that the people of the constituency were disgruntled about the closure. The plaintiff made a press statement denying these allegations and about a week later, the defendants reported that the Rantau service centre was only re-opened after the publication of the closure in their newspapers and that the plaintiff in his press statement had hidden the fact of disconnection of electricity supply. The plaintiff's solicitors demanded from the first defendant the withdrawal of the articles and an open apology in the defendants' newspaper. In response to this, the defendants published an article stating that they regretted the articles had hurt the plaintiff's feelings and that they were based on information they had received. The plaintiff was not satisfied with the explanation published and filed a writ of summons against the defendants. The plaintiff also filed an ex parte summons-in-chambers seeking an injunction against the defendants. The ex parte injunction was granted by the court and the defendants have now applied to set aside the ex parte injunction.

Held, allowing the defendant's application:

In general, an injunction would not be given unless the plaintiff/applicant satisfies the court that the statements complained of are untrue. Furthermore the statements complained of and averments that they are not true should have been stated in the affidavit supporting the application for the injunction. This was not done when the plaintiff applied for the injunction. It is only after receiving the application to lift the injunction with the supporting affidavit of the defendants that the plaintiff replied, annexing exhibits claiming that the statements are not true. The injunction therefore cannot stand.

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Appeal No 553 of 1988.]

Case referred to

1 *Quartz Hill Consolidated Gold Mining Co* v *Beall* (1882) 20 Ch D 501 (folld)

Pretam Singh for the plaintiff.
N Ramachandran for the defendants.

Cur Adv Vult

Mustapha Hussain J: The plaintiff is an elected state assemblyman for Rantau constituency and also a state executive councillor. He is also the chairman of the Malaysian Indian Congress for the State of Negeri Sembilan. One of the services provided by the plaintiff to his constituency as an elected representative is a service centre in Rantau where the constituents can go and seek help from the plaintiff.

The first defendant is the publisher of a Tamil language newspaper called *Thinamani* and the second defendant is the editor of that newspaper which runs quite a wide circulation, including Sunday editions.

On 2 October 1988, the defendants published in their newspaper *Thinamani* that the service centre in Rantau operated by the plaintiff to serve the constituency of Rantau had been closed down for good and that the people of the constituency of Rantau were disgruntled about the closure. The article also said that the plaintiff did not go to the service centre for about three months and further stated that the plaintiff, although he did not go to the service centre, he at least should have paid the bills of electricity charges for the premises and the electricity supply had been disconnected. The article said that the people of the constituency were left deserted.

Of course this article in the Tamil daily *Thinamani* is very damaging for the plaintiff considering his high political standing. On the same day, 2 October 1988, the plaintiff made a press statement denying that the service centre in Rantau had been closed or the service to the people was stopped and the plaintiff threw open a challenge to anyone to prove otherwise.

Following this, on 8 October 1988, the defendants' newspaper *Thinamani* reported that the Rantau service centre was only re-opened after the first publication in *Thinamani* on 2 October of the closure of the centre. The article of 8 October 1988 also pointed out that the plaintiff in his press statement had hidden the fact of disconnection of electricity supply to the service centre twice in the past and the service centre started to open in the afternoons after the news of its closure were highlighted in *Thinamani* earlier. The same article also carried an item of news about the switching of the plaintiff from Si-Rusa constituency to Rantau constituency at the last general elections.

Then followed a letter dated 10 October 1988 from the plaintiff's solicitors addressed to the first defendant and stating that the publications on 2, 5 and 9 October 1988 of the aforesaid articles were libellous and not true and demanded withdrawal of such articles and an open apology in the defendants' newspaper *Thinamani*.

In response to this, the defendant did publish on 12 October 1988 an article stating that they regretted if the article carried by their newspaper about the plaintiff on the said dates had hurt the plaintiff's feelings and that the articles or news items they published were based on information they had received. Further, the defendants said that in publishing the said articles and news items, they meant no malice or ill will towards the plaintiff.

On the same day, 12 October 1988, the plaintiff's solicitors wrote another letter to the first defendant stating that the plaintiff was not satisfied with the explanation published on 12 October 1988 and demanded a suitable open apology and withdrawal of the articles in terms to be approved by the plaintiff, within 48 hours, failing which the plaintiff will resort to court action.

The above are the events which preceded the plaintiff's filing on 20 October 1988 a writ of summons with statement of claim against the two defendants. The plaintiff also filed an ex parte summons-in-chambers at the same time together with the supporting affidavit seeking an injunction. The ex parte injunction was granted by the court on 21 October 1988, on a certificate of urgency.

The defendants by notice of motion dated 1 November 1988 on a certificate of urgency have applied to dissolve the ex parte injunction.

At the hearing of this notice of motion on 4 November 1988, counsel for the defendants very ably cited many cases in support of his contention to set aside the injunction. The most relevant case is that of *Quartz Hill Consolidated Gold Mining Co* v *Beall*,[1] decided more than 100 years ago on 22 February 1882. This case which has not been challenged to be wrong, clearly laid down the law that the injunction in general would not be given unless the plaintiff/applicant satisfies the court that the statements complained of *are untrue*. And the statements complained of and averments that they are not true should have been stated in the affidavit supporting the application for the injunction. This was not done when the plaintiff applied for the injunction. This is fatal. The injunction cannot stand. It is only after receiving the application to lift the injunction with the supporting affidavit of the defendants that the plaintiff replied, annexing exhibits claiming that the statements are not true. This is too late in the day. In fact, the plaintiff's affidavit in reply more or less confirmed the criticisms published by the defendants, who as a free press are bound to report on the true state of affairs of the constituency and the performance of the elected representative for the information of the people who elected the plaintiff and if the reports are not true then the defendants are open for action, for libel and can be liable for damages.

It is on this point of law alone that I order the injunction to be lifted as from today, with costs of this application to the defendants in any event to be taxed and

paid. Question of damages to be decided at the trial proper of the suit.

Indeed, by a strange twist of irony, the story highlighted by the defendants in their newspaper, whether true or not, has brought publicity to the plaintiff's constituency that the plaintiff has been operating a service centre to serve the needs and to look into the problems of the people of his constituency who elected him, something which is commendable of an elected representative. In fact the plaintiff should be thankful that there is a press like the defendants' to check and improve the plaintiff's services to the people of his constituency.

The defendants' newspaper *Thinamani*, like all the newspapers, is a free press although there are certain laws restricting their publication.

Reports on the workings, activities, conduct and services of the elected representatives of legislatures are not restricted by any law except that the reports must not be untrue.

The people who elected their representatives have a right to know what their elected representatives are doing and to improve the conditions in their constituencies and to meet the needs of the electorate. And if in the process some unpleasant criticisms are made, made bona fide and in the interest of the constituency and the people of the constituency whose welfare and needs the elected representative is duty bound to look after, then the representative cannot complain. In fact the higher one goes, especially in the political echelon, one is more open to criticism and public attention is focused him, even to the extent of losing one's privacy. This is the price one has to pay for high elected office like that of the plaintiff.

The plaintiff is not without remedy. If at the trial he can prove that the statement published by the defendants was not true, he is entitled to damages. And if the defendants were to publish anything false against the plaintiff, the plaintiff can still come to the court for relief.

Application allowed.

Solicitors: *Muthu & Partners* ; *N Ramachandran & Co* .

Reported by *Ng Sheau Jiuan*

Lim Sin Oo & Ors v Cheah Tjeng Siong

HIGH COURT (PENANG) – CIVIL SUIT NO 23-234-87
WAN ADNAN J
26 JANUARY 1989

Contract – Specific performance – Claim for – Failure on defendant's part to pay balance of purchase price for property – Whether plaintiffs entitled to claim specific performance under terms of sale agreement – Plaintiffs terminated existing tenancies in contemplation of sale agreement – Whether damages an adequate remedy – Specific Relief Act 1950, s 11(1) & 19

Contract – Rescission – Failure on defendant's part to pay balance of purchase price for property – Notice of demand of payment sent to defendant – Negotiations between plaintiffs and defendant on lower purchase price – Failure in negotiations – Whether conduct signified abandonment of sale agreement

By an agreement made between the plaintiffs and the defendant, the plaintiffs agreed to sell to the defendant a piece of property for $999,000. The defendant made a total payment of $399,900 but had failed to pay the balance of $599,100. The plaintiffs sent a notice to the defendant demanding payment of $599,100 and subsequently there were negotiations wherein the defendant evinced an intention to complete the sale at a lower price. However, negotiations broke down and the plaintiffs claimed for specific performance of the agreement. The defendant then applied for an order that the statement of claim be struck off, contending that: (a) the agreement had been rescinded and the plaintiffs are therefore only entitled to the remedy under cl 7 of the agreement which was that they were entitled to forfeit the deposit and resell the property to other persons; (b) by virtue of cl 13 of the agreement (which stated that 'the purchaser shall be entitled to specific performance of this agreement and also to file private caveats against the property upon the execution of the agreement'), only the defendant was entitled to the relief of specific performance; (c) the plaintiffs had breached the agreement by unilaterally extending the completion date. The plaintiffs argued that this was a proper case for the court to exercise its discretion to grant specific performance of the agreement because the pecuniary compensation for its non-performance would not afford adequate relief. They said that they took steps to terminate three existing tenancies by compensating the tenants and had thereby suffered loss and damage when the defendant failed to complete the agreement.

Held, dismissing the defendant's application:

(1) An agreement is rescinded only when there is a total abandonment of the whole contract. The parties had continued to negotiate after the issue of the notice, and upon the failure of the negotiations, the plaintiffs issued another notice. The conduct clearly negatived any intention to abandon the contract. There was therefore no rescission of the agreement.

(2) Clause 13 does not state that the plaintiffs (vendor) are disentitled to the relief of specific performance. Section 19 of the Specific Relief Act 1950 provides that a contract may be specifically enforced even though a sum is named in the contract as the amount to be paid in case of its breach. Therefore the stipulation in cl 7 of a sum of money to be paid as damages in case of breach by the purchaser (defendant) is not a bar to a claim for specific performance by the plaintiffs. The clause also says 'at their absolute discretion ...'. This shows that under the provisions of cl 7 the plaintiffs (vendor) had the choice of either determining the agreement or claiming for specific perform-